

STATE OF TEXAS
COUNTY OF HARRIS

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§

RE: Skimmer box forming tool - LETTER FROM CO-INVENTOR

My name is William O. Wolgast. I am over 18 years of age and am capable of making this affidavit and the statements herein are within my personal knowledge. I am a co-inventor of the skimmer box formation tool. After the skimmer box forming tool was constructed, I have used the skimmer box forming tool for each in-ground swimming pool I have constructed.

When others at the worksite have seen the tool in action, they couldn't believe it could be done as easily as it is and they ask me where they can get one. Forming the skimmer box without the manual digging saves much time and energy and reduces the risk of injury. This tool has improved the profitability of my operation. In addition, I personally have saved much time and physical effort constructing numerous skimmer boxes with this tool.

This tool is very significant to my operation. This invention has also improved the safety on the job site. Injuries on the pool construction work site can be very expensive.

This statement is true and correct to the best of my knowledge.

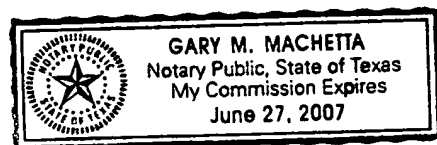
SIGNED June 28, 2006

William O. Wolgast
William O. Wolgast

Being duly sworn before me appeared William O. Wolgast and made this statement on June 29th, 2006.

(Seal)

[Signature]
IN AND FOR THE STATE OF TEXAS





07-03-06

JFW

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

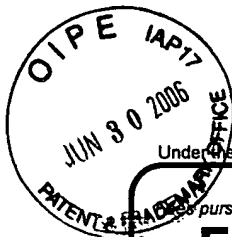
TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/758,516	
	Filing Date	01/15/2004	
	First Named Inventor	William Wolgast	
	Art Unit	3671	
	Examiner Name	Toni Newville	
Total Number of Pages in This Submission	19	Attorney Docket Number	03006

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> After Allowance Communication to TC
<input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): 1. Office Action dated 4/4/2006 2. Letter from William Wolgast (Co-Inventor)
<input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	Remarks We are requesting an interview with the newly assigned Examiner.	
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	Machetta Law Firm, P.C.	
Signature		
Printed name	Gary M. Machetta	
Date	06/29/2006	Reg. No. 53,251

CERTIFICATE OF TRANSMISSION/MAILING	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:	
Signature	
Typed or printed name	Gary M. Machetta
Date	6/29/06

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



FEE TRANSMITTAL
For FY 2006

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

Complete if Known

Application Number 10/758,516
Filing Date 01/15/2004
First Named Inventor William Wolgast
Examiner Name Toni Newville
Art Unit 3671
Attorney Docket No. 03006

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify):
☒ Deposit Account Deposit Account Number: 502987 Deposit Account Name: Machetta Law Firm, P.C.
For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)
☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
Total Claims	Extra Claims	Fee (\$)
- 20 or HP =	x	=
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims	Extra Claims	Fee (\$)
- 3 or HP =	x	=
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$)

- 100 = / 50 = (round up to a whole number) x = Fee Paid (\$)

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge):

Fees Paid (\$)

SUBMITTED BY

Signature

Registration No. 53,251
(Attorney/Agent)

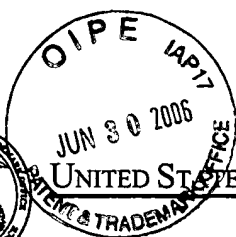
Telephone 281-301-2005

Name (Print/Type) Gary M. Machetta

Date 06/29/06

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,516	01/15/2004	William Orman Wollgast	03006	5804

39047 7590 04/04/2006

MACHETTA LAW FIRM, P.C
14614 FALLING CREEK DRIVE
HOUSTON, TX 77068

EXAMINER

NEWVILLE, TONI E

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary

Application No.	Applicant(s)	
10/758,516	WOLLGAST ET AL.	
Examiner	Art Unit	
Toni Newville	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |



DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Navarro, US 6038795.

Regarding claim 1, Navarro discloses a digging attachment (10) for securement to a work-type vehicle that could be used for constructing a skimmer box for a swimming pool, comprising:

A connecting frame (17) with extensions (top and bottom arms of 17 in Fig. 2) near the bottom of said connecting frame (17) allowing for the connection to a vehicle latching mechanism;

A base (12), shaped like a box, with five sides and an open end, including: a top side, a bottom side, a left side, a right side (column 2 lines 30-33) and a back side (14) as well as two open cutouts (13);

The said open side has edges (60) that are shaped to cut through the surface;

The back side of said base (12) connected perpendicular to said connecting frame (17) and near the bottom so that the base is directed just above the latching

Art Unit: 3671

mechanism and along the opposite side of the extensions providing support when the vehicle is attached (Fig. 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Navarro, US 6038795.

Regarding claim 2, Navarro discloses a digging attachment for securement to a work-type vehicle that could be used for constructing a skimmer box for a swimming pool, but fails to disclose the base (12) being in dimensions for forming a standard-size skimmer box.

Like Navarro, Powers discloses forming a skimmer box (134) for a swimming pool. Unlike Navarro, Powers discloses excavating a shelf for mounting the skimmer box, the shelf having a depth of 35 inches and a width of 24 inches.

Given the suggestion in Powers, it would have been obvious to one of ordinary skill in the art to modify the base (10) of Navarro to be in dimensions suitable for accommodating a standard size skimmer box, such as 15 to 30 inches wide by 15 to 30 inches high by 15 to 30 inches deep (claim 2), or 24 inches wide by 28 inches high by

Art Unit: 3671

28 inches deep (claim 3), since the base (Navarro; 10) of Navarro, having a horizontal bottom surface, would be ideal for skimmer box construction because of its ability to carve out rectangular ground portions.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Navarro, US 6038795, in view of Powers, US 4976088.

Navarro discloses an attachment for securement to a work-type vehicle as described above regarding claims 1-3, but fails to disclose a method of using the attachment (10) for constructing a skimmer box during swimming pool or spa construction.

Like Navarro, Powers discloses a method for constructing a skimmer box during swimming pool construction. Unlike Navarro, Powers discloses excavating a "work shelf" for accommodating a skimmer box, the work shelf being at the top of an excavated wall surface (column 4 lines 3-11).

Given the teaching in Powers, it would have been obvious to use the base (10) of Navarro to form a skimmer box, including the steps of connecting a skidsteer loader to the base (10), moving the attachment to the swimming pool wall, raising and aligning the attachment to near the top of the wall surface where the skimmer box is to be located, inserting fully the open end of the base of the attachment with a cutting edge into the wall, and raising the attachment to remove dirt and other items from the wall and thus forming the shape for the skimmer box, because the horizontal lower surface

of the base (10) of Navarro could create an even horizontal surface for a skimmer box, without the complicated bucket maneuvering that would be required to produce similar results from a typical excavator.

Response to Arguments

6. Applicant's arguments filed 2/6/2006 regarding claim 1 has been fully considered but they are not persuasive.

Regarding the applicant's argument that the base 10 in Navarro is not an attachment for forming or constructing a skimmer box, the examiner contends that the device 10 in Navarro is of a size and shape capable of forming such a skimmer box. The device 10 could be easily attached to a work-type vehicle, especially a forklift type machine.

While Navarro may disclose the base 10 being of different dimensions than those claimed by the applicant, a mere change in size does not make one invention patentable over another. Moreover, a skimmer box would need to be of various dimensions based on the swimming pool size, building constraints, etc.

Regarding the applicant's arguments that Navarro does not show extensions near the bottom of the connecting frame 17 allowing for connection to a vehicle latching mechanism, Navarro shows connecting frame 17 having legs comprising extensions which extend along the length of the device 10 (see Fig. 2, near 19). These extensions allow for connection to a vehicle latching mechanism.

Regarding the applicant's arguments that the edges in Navarro will not cut through a digging surface, Navarro discloses the device 10 having narrow edges that would inherently be capable of penetrating a digging surface.

Regarding the applicant's arguments that the connecting frame 17 is not connected perpendicular to the back side, the connecting frame 17 is generally perpendicular to the back side when arms near 19 lie parallel to the bottom of the device 10. Additionally, the base 10 is connected to the connecting frame 17 near the bottom of the connecting frame, the base 10 capable of being directed just above a latching mechanism.

The previous rejection of claim 1 has therefore been repeated in this office action.

7. Applicant's arguments with respect to claims 2 and 3 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's arguments, see, filed 2/6/2006, with respect to the rejection(s) of claim(s) 4 under 102(b) as anticipated by Navarro have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 103(a) as anticipated by Navarro in view of Powers, US 4976088.

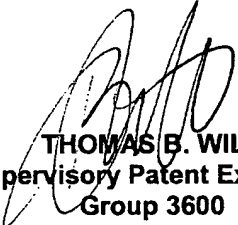
Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toni Newville whose telephone number is (571) 272 - 1548. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Toni Newville
March 30, 2006


THOMAS B. WILL
Supervisory Patent Examiner
Group 3600



Notice of References Cited	Application/Control No. 10/758,516	Applicant(s)/Patent Under Reexamination WOLLGAST ET AL.	
	Examiner Toni Newville	Art Unit 3671	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-4,976,088	12-1990	Powers, John W.	52/741.12
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.